

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 09-01, N. JAMES TURNER

CASE NO. SC09-1182

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RESPONDENT'S ANSWER AND AFFIRMATIVE DEFENSES

Respondent, The Honorable N. James Turner, by and through undersigned counsel, and pursuant to Rule 9 of the Florida Judicial Qualifications Commission Rules, files his Answer to the Notice of Formal Charges served on or about July 8, 2009, respectfully denying the allegations as set forth below:

1. The Respondent denies each and every allegation and legal conclusion contained in paragraph 1 and demands strict, clear and convincing proof thereof.

2. The Respondent denies each and every allegation and legal conclusion contained in paragraph 2 and demands strict, clear and convincing proof thereof.

3. The Respondent denies each and every allegation and legal conclusion contained in paragraph 3 and demands strict, clear and

convincing proof thereof.

4. The Respondent denies each and every allegation and legal conclusion contained in paragraph 4 and demands strict, clear and convincing proof thereof.

5. The Respondent denies the allegations of paragraph 5, and asserts the Third Affirmative Defense set forth below.

6. The Respondent denies each and every allegation and legal conclusion contained in paragraph 6 and demands strict, clear and convincing proof thereof.

7. All remaining allegations and legal conclusion in the Notice of Formal Charges are denied and Respondent demands strict, clear and convincing proof thereof.

AFFIRMATIVE DEFENSES

The Respondent affirmatively alleges as follows:

First Affirmative Defense

Respondent denies each of the allegations in the Notice of Formal Charges. Without waiving this denial, the activities alleged to have occurred are protected by the First Amendment to the United States Constitution.

Republican Party of Minnesota v. White, 536 U.S. 765 (2002).

Second Affirmative Defense

Paragraphs 1, 2, 3, 4 and 6 fail to state essential facts to which a response could be fashioned as to how the Respondent knowingly and purposefully participated in partisan activities. These paragraphs contain conclusions rather than factual allegations which the Respondent could admit and/or deny with specificity. The allegations are unconstitutionally vague, and insufficient to allow the Respondent to frame a detailed response. Upon service of a Notice of Amended Formal Charges containing sufficient specificity, the Respondent would be willing and able to provide a more detailed response to paragraphs 1, 2, 3, 4 and 6.

Third Affirmative Defense

A Grievance Committee of The Florida Bar concluded in File No. 2009-30,266(09E), after reviewing a complaint alleging the same facts as form the basis for paragraph 5 of the Judicial Qualifications Commission Notice of Formal Charges, found that there was no probable cause for further disciplinary proceedings. Therefore, Respondent respectfully submits that a determination has already been made on this issue by The Florida Bar's finding of no probable cause. Because both The Florida Bar and the Judicial Qualifications Commission are arms of the Supreme Court

of Florida, prosecution of this matter by the Judicial Qualifications Commission runs counter to the doctrines of collateral estoppel and double jeopardy. In the alternative, the findings and recommendations of the Judicial Qualifications Commission should be mitigated by the finding of no probable cause by The Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 24th day of July, 2009, to the following: Marvin E. Barkin, Special Consulting Counsel, 101 E. Kennedy Blvd., Suite 2700, P.O. Box 1102 Tampa, FL 33601-1102 and Michael L. Schneider, General Counsel, Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, FL 32303-6224.

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